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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FRANK COHN, individually and on behalf of a
class of all similarly situated persons,

Plaintiff,

vs.

RITZ TRANSPORTATION, INC., AWG
AMBASSADOR, LLC, ALAN WAXLER, and
RAYMOND CHENOWETH,

Defendants.

CASE NO. 2:11-cv-1832-JCM-RJJ

**DEFENDANTS' ANSWER TO FIRST
SUPPLEMENTAL COMPLAINT**

Defendants RITZ TRANSPORTATION, INC., AWG AMBASSADOR, LLC, ALAN WAXLER, and RAYMOND CHENOWETH (collectively "Defendants"), by and through their attorneys, the law firm of Gordon Silver, hereby answer Plaintiff's First Supplemental Complaint on file herein (the "Supplemental Complaint") as follows:

PARTIES AND PRELIMINARY STATEMENT

1. Answering Paragraph 1 of the Supplemental Complaint, Defendants admit only that Cohn is a former employee of Ritz Transportation, Inc. and AWG Ambassador, LLC.

1 Defendants lack knowledge or information sufficient to form a belief as to the truth or veracity of
2 the remaining allegations contained in this paragraph of the Supplemental Complaint, and
3 therefore specifically and generally deny said allegations.

4 2. Answering Paragraph 2 of the Supplemental Complaint, Defendants admit that
5 Ritz Transportation, Inc. is a Nevada corporation, AWG Ambassador, LLC is a Nevada limited
6 liability company, that their principal places of business are in Clark County, Nevada, that Alan
7 Waxler and Raymond Chenoweth are the managers of AWG Ambassador, LLC, and, except as
8 so admitted, deny the remaining allegations of this paragraph.

9 3. Answering Paragraph 3 of the Supplemental Complaint, Defendants lack
10 knowledge or information sufficient to form a belief as to the truth or veracity of the allegations
11 contained in this paragraph of the Supplemental Complaint, and therefore specifically and
12 generally denies said allegations.

13 4. Denied.

14 5. Denied.

15 **THE PROPOSED CLASS CLAIMS AND PARTIES**

16 6. Answering Paragraph 6 of the Supplemental Complaint, Defendants admit that
17 Plaintiff purports to assert claims arising under Section 16(b) of the Fair Labor Standards Act
18 ("FLSA"), but denies that the allegations of Plaintiff's Supplemental Complaint state such claims
19 or that Plaintiff is entitled to such relief, and except as so admitted, denies the remaining
20 allegations of this paragraph.

21 7. [sic] Answering Paragraph 6 [sic] of the Supplemental Complaint, Defendants
22 admit that Plaintiff purports to bring this action as a class action pursuant to N.R.C.P. 23, but
23 denies that the allegations of Plaintiff's Supplemental Complaint state such claims or that
24 Plaintiff is entitled to such relief, and except as so admitted, denies the remaining allegations of
25 this paragraph.

26 8. Answering Paragraph 7 of the Supplemental Complaint, Defendants admit that
27 Plaintiff purports to bring this action as a class action pursuant to N.R.C.P. 23, but denies that the
28

1 allegations of Plaintiff's Supplemental Complaint state such claims or that Plaintiff is entitled to
2 such relief, and except as so admitted, denies the remaining allegations of this paragraph.

3 9. Denied.

4 10. Denied.

5 11. Denied.

6 12. Denied.

7 13. Denied.

8 14. Denied.

9 15. Denied.

10 16. Denied.

11 **FACTUAL ALLEGATIONS UNDERLYING THE CLAIMS**

12 17. Answering Paragraph 16 of the Supplemental Complaint, Defendants admit only
13 that Ritz Transportation, Inc. was in the business of and AWG Ambassador, LLC is in the
14 business of providing shuttle services to locations, including, but not limited to, the Las Vegas
15 airport, Las Vegas hotels, Las Vegas conventions, and other events taking place in Clark County,
16 Nevada. Defendants also admit that Defendants employed Plaintiff as a driver. All remaining
17 allegations are denied.

18 18. Denied.

19 19. Denied.

20 20. Denied.

21 **AS AND FOR A FIRST CLAIM FOR RELIEF PURSUANT TO THE**
22 **FAIR LABOR STANDARDS ACT AGAINST ALL DEFENDANTS ON BEHALF OF**
23 **THE NAMED PLAINTIFF AND ALL OTHERS SIMILARLY SITUATED**

24 21. Answering Paragraph 20 of the Supplemental Complaint, Defendants admit that
25 Plaintiff purports to assert claims arising under Section 16(b) of the FLSA, but denies that the
26 allegations of Plaintiff's Supplemental Complaint state such claims or that Plaintiff is entitled to
such relief, and except as so admitted, denies the remaining allegations of this paragraph.

27 22. Denied.

28 23. Denied.

1 **AS AND FOR A SECOND CLAIM FOR RELIEF PURSUANT**
2 **TO NEVADA REVISED STATUTES § 608.018 AGAINST THE**
3 **CORPORATE DEFENDANTS ON BEHALF OF THE NAMED PLAINTIFF**
4 **AND ALL OTHERS SIMILARLY SITUATED**

5 24. Answering Paragraph 23 of the Supplemental Complaint, Defendants specifically
6 incorporates herein as if set forth in full their responses to the preceding paragraphs of the
7 Supplemental Complaint.

8 25. Answering Paragraph 24 of the Supplemental Complaint, Defendants admit that
9 Plaintiff purports to bring this claim on behalf of a class, but denies that the allegations of
10 Plaintiff's Supplemental Complaint state such claims or that Plaintiff is entitled to such relief,
11 and except as so admitted, denies the remaining allegations of this paragraph.

12 26. Denied.

13 27. Denied.

14 **AS AND FOR A THIRD CLAIM FOR RELIEF PURSUANT TO**
15 **NEVADA REVISED STATUTES § 608.040 ON BEHALF OF**
16 **THE NAMED PLAINTIFF AND THE PUTATIVE CLASS AGAINST**
17 **THE CORPORATE DEFENDANT**

18 28. Answering Paragraph 27 of the Supplemental Complaint, Defendants specifically
19 incorporates herein as if set forth in full their responses to the preceding paragraphs of the
20 Supplemental Complaint.

21 29. Answering Paragraph 24 of the Supplemental Complaint, Defendants admit that
22 Plaintiff purports to bring this claim on behalf of a class, but denies that the allegations of
23 Plaintiff's Supplemental Complaint state such claims or that Plaintiff is entitled to such relief,
24 and except as so admitted, denies the remaining allegations of this paragraph.

25 30. Answering Paragraph 29 of the Supplemental Complaint, Defendants admit only
26 that Plaintiff was separated from his employment on or about September 20, 2011. All
27 remaining allegations are denied.

28 31. Denied.

 32. Denied.

**AS AND FOR A FOURTH CLAIM FOR RELIEF ON BEHALF OF
PLAINTIFFS FOR DAMAGES SUSTAINED AS
THIRD PARTY CONTRACT BENEFICIARIES**

33. Answering Paragraph 32 of the Supplemental Complaint, Defendants specifically incorporates herein as if set forth in full their responses to the preceding paragraphs of the Supplemental Complaint.

34. Answering Paragraph 33 of the Supplemental Complaint, Defendants admit only that certain shuttle bus services include mandatory service charges, which are paid to the drivers. All remaining allegations are denied.

35. Denied.

36. Denied.

37. Denied.

38. Answering Paragraph 37 of the Supplemental Complaint, Defendants lack knowledge or information sufficient to form a belief as to the truth or veracity of the allegations contained in this paragraph of the Supplemental Complaint, and therefore specifically and generally denies said allegations.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

**FIFTH CLAIM FOR RELIEF FOR WRONGFUL INTERFERENCE WITH
PROSPECTIVE ECONOMIC ADVANTAGE**

43. Answering Paragraph 42 of the Supplemental Complaint, Defendants specifically incorporates herein as if set forth in full their responses to the preceding paragraphs of the Supplemental Complaint.

44. Answering Paragraph 43 of the Supplemental Complaint, Defendants admit only that certain shuttle bus services include mandatory service charges, which are paid to the drivers. All remaining allegations are denied.

45. Denied.

1 46. Denied.

2 47. Denied.

3 48. Denied.

4 49. Denied.

5 50. Denied.

6 51. Denied.

7 52. Denied.

8 53. Denied.

9 54. Denied.

10 **SIXTH CAUSE OF ACTION FOR CONVERSION**

11 55. Answering Paragraph 54 of the Supplemental Complaint, Defendants specifically
12 incorporates herein as if set forth in full their responses to the preceding paragraphs of the
13 Supplemental Complaint.

14 56. Denied.

15 57. Denied.

16 58. Denied.

17 59. Denied.

18 60. Denied.

19 **SEVENTH CAUSE OF ACTION FOR RELIEF UNDER 29 U.S.C. § 215 OF THE FAIR**
20 **LABOR STANDARDS ACT AGAINST ALL DEFENDANTS EXCEPT THE**
21 **INDIVIDUAL DEFENDANTS ON BEHALF OF PLAINTIFF COHN ONLY**

22 61. Answering Paragraph 60 of the Supplemental Complaint, Defendants state that
23 the language of the statute referred to in this paragraph are contained in a document of
24 independent legal significance, and to the extent Plaintiff's recitation and/or characterization of
25 same differs from said statute, said allegations are specifically and generally denied.

26 62. Answering Paragraph 61 of the Supplemental Complaint, Defendants state that
27 the language of the statute referred to in this paragraph are contained in a document of
28 independent legal significance, and to the extent Plaintiff's recitation and/or characterization of
same differs from said statute, said allegations are specifically and generally denied.

63. Denied.

(a) Answering Paragraph 62(a) of the Supplemental Complaint, Defendants admit only that they filed a counterclaim against Plaintiff in this action for Breach of the Duty of Loyalty, which counterclaim has since been dismissed. All remaining allegations are denied.

(b) Answering Paragraph 62(b) of the Supplemental Complaint, Defendants admit only that Plaintiff was separated from his employment at AWG Ambassador, LLC on or about September 20, 2011. All remaining allegations are denied.

64. Denied.

65. Denied.

AFFIRMATIVE DEFENSES

All possible affirmative defenses may or may not have been asserted herein insofar as sufficient facts were not available to Defendants after reasonable inquiry upon the filing of this pleading and therefore, Defendants assert the following defenses based in fact or upon reasonable belief and hereby reserves the right to amend this Answer to allege appropriate or additional defenses, if subsequent investigation of discovery so warrants.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein fails to state any claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred in whole or in part by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred because Defendants acted reasonably, lawfully, and in good faith and with reasonable grounds for believing that they were not in violation of the FLSA at all times material herein based on all relevant facts and circumstances known to them.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred to the extent that Plaintiff and the putative class members he purports to represent were and are exempt employees pursuant to the United States Code, Code of Federal Regulations, Fair Labor Standards Act, Nevada Revised Statutes, including, but not limited to, the Motor Carrier Act Exemption codified in 29 U.S.C. § 213(b)(1).

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred as to Defendants Alan Waxler and Raymond Chenoweth because said persons are not, and have never been, Plaintiff's employer.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's claims and those of the putative class members he purports to represent are barred and/or recovery is precluded, in whole or in part, because Defendants' conduct was not reckless and/or willful.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred, in whole or in part, because Plaintiff and the putative class members he purports to represent failed to exhaust their administrative remedies.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims fail to state facts sufficient to serve as a basis for punitive damages against Defendants.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's claim for punitive damages is barred in whole or in part to the extent that any such award would be violative of the constitutional safeguards provided to Defendants under the constitutions of the State of Nevada or the United States of America.

TENTH AFFIRMATIVE DEFENSE

Plaintiff and the putative class members he purports to represent failed to exercise reasonable diligence to mitigate said harm/damages (if any were in fact suffered, which is

1 expressly denied) and, therefore, are barred from recovering any damages or any damages
2 awarded to them should be reduced accordingly.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 If Plaintiff and the putative class members he purports to represent suffered any
5 harm/damages (if any were in fact suffered, which is expressly denied), said harm/damages were
6 proximately caused by their own acts.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 Defendants deny any compensation or funds are owed to Plaintiff and the putative class
9 he purports to represent; however, if Plaintiff and the putative class are ultimately determined to
10 be entitled to compensation or funds, Defendants are entitled to a setoff for all compensation or
11 funds paid to or procured by Plaintiff and the putative class members.

12 **THIRTEENTH AFFIRMATIVE DEFENSE**

13 Plaintiff's Supplemental Complaint and each and every purported cause of action alleged
14 therein is barred to the extent that Plaintiff and the putative class members he purports to
15 represent ratified and confirmed the alleged acts of Defendants by accepting the benefits
16 accruing from such acts.

17 **FOURTEENTH AFFIRMATIVE DEFENSE**

18 Plaintiff's Supplemental Complaint and each and every purported cause of action alleged
19 therein is barred by failure to demand payment.

20 **FIFTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's Supplemental Complaint and each and every purported cause of action alleged
22 therein, are barred by the doctrines of waiver, estoppel, ratification, acquiescence, consent and/or
23 agreement based on their acceptance of wages paid to them throughout their employment
24 without protest and, to the extent applicable, upon acceptance of final wages paid to them
25 without protest upon the termination of their employment.

26 ///

27 ///

28 ///

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred by the doctrine of estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred by the doctrine of waiver.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred by the doctrine of laches.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred by the doctrine of consent.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiff has not satisfied and cannot satisfy the requirements for certification of any class under the FLSA or Rule 23.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action alleged therein is barred to the extent Plaintiff and such putative class members fell within a class of plaintiffs in another action that had identical claims.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff's Supplemental Complaint and each and every purported cause of action therein is barred by mandatory arbitration agreements.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff's claim for third party contract beneficiaries is barred, in whole or in part, on the grounds that Plaintiff and the putative class members he purports to represent were not intended beneficiaries to any alleged contracts.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claim for wrongful interference with prospective economic advantage is barred, in whole or in part, on the grounds that Defendants did not interfere, intentionally or otherwise, with any prospective contracts between Plaintiffs and any third parties.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claim for conversion is barred, in whole or in part, on the grounds that Defendants did not exercise dominion over any of Plaintiff's property in denial of, inconsistent with, and/or in derogation, exclusion, or defiance of Plaintiff's title or rights to said property.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiff's individual claim for relief pursuant to 29 U.S.C. § 215 is barred, in whole or in part, on the grounds that Plaintiff was no longer employed by Defendants at the time of the acts alleged.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants hereby incorporate those defenses enumerated in Rule 8 of the Federal Rules of Civil Procedure as though fully set forth herein. In the event further investigation and discovery reveals the applicability of such defenses, Defendants reserve the right to seek leave of Court to assert such defenses. Such defenses are specifically incorporated by reference for the purposes of not waiting any such defense.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants presently have insufficient knowledge or information upon which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendants reserve the right to assert additional affirmative defenses in the event that investigation and discovery indicate they would be appropriate.

WHEREFORE, Defendants pray as follows with respect to the First Supplemental Complaint:

1. For Plaintiff to take nothing by virtue of its First Supplemental Complaint and, further, for its claims asserted therein against Defendants and each of them to be dismissed with prejudice;

2. For a judgment to be entered in favor of the Defendants and each of them on the First Supplemental Complaint and all claims for relief asserted therein;

3. For reasonable attorneys' fees and costs; and

4. For such other and further relief as the Court may deem just and proper.

Dated this 3rd day of May, 2012.

GORDON SILVER

/s/ Molly M. Rezac

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Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned, an employee of Gordon Silver, hereby certifies that on the 3rd day of May, 2012 she filed and served a copy of the DEFENDANTS ANSWER TO FIRST SUPPLEMENTAL COMPLAINT, via the Court's CM/ECF filing system upon:

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Shondel Ferrera, an employee of
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